

### **REMARKS/ARGUMENTS**

Reconsideration of this Application and entry of this Amendment after Final are respectfully requested. Claims 34-36 are currently pending in the application. This amendment addresses items brought up by the Examiner in the final office action. In view of the amendments and following remarks, favorable consideration and allowance of the application is respectfully requested.

#### **35 U.S.C. §102 Rejections**

Claims 34-36 have been rejected under 35 U.S.C. §102(e) as being anticipated by Alvarado *et al.* (US Patent 6,530,950).

To establish anticipation under 35 U.S.C. §102(e), the prior art reference must teach or suggest all the claim limitations. The Alvarado patent fails to disclose all the claim limitations of independent claims 34-36, so the Alvarado patent fails to anticipate the Applicant's invention as claimed.

**Independent Claim 34:** In the final office action mailed April 26, 2005, the Examiner asserted that the Alvarado patent discloses "individual bands of the plurality of bands contain[ing] different therapeutic agents" as recited in independent claim 34. The Applicant respectfully submits that the Alvarado patent fails to disclose this claim limitation. The Examiner cites Column 14, lines 7-20, of the Alvarado patent as disclosing a variety of therapeutic agents, but this is immaterial to whether individual bands contain different therapeutic agents as claimed. Although the Alvarado patent mentions use of two therapeutic agents at Column 14, lines 30-34, the Alvarado patent does not disclose using one therapeutic agent on one individual band and a different therapeutic agent on another individual band.

In the Response to Arguments section of the final office action mailed April 26, 2005, the Examiner noted that claim 34 failed to include the feature of different therapeutic agents being present on different polymer members. The Applicant was not asserting that the term "polymer member" appeared in claim 34, but was using the terminology of the Alvarado patent to clarify the point that different therapeutic agents are on different bands in the Applicant's invention as claimed. Claim 34 recites "individual bands of the plurality of bands contain different therapeutic agents," so different therapeutic agents are clearly present on different, individual bands of the plurality of bands in the claim. In one example of the Applicant's invention as claimed for purposes of illustration, individual Band A of

the plurality of Bands A, B, and C contains Therapeutic Agent A and individual Band B of the plurality of Bands A, B, and C contains Therapeutic Agent B.

Reconsideration of the rejection of independent claim 34 is respectfully requested.

Independent Claim 35: In the final office action mailed April 26, 2005, the Examiner asserted that the Alvarado patent discloses “the procedure [sic] in figure 3c is capable of having the plurality of bands that are made of different polymers” as recited in independent claim 35. The Applicant respectfully submits that the Alvarado patent fails to disclose the claim limitation that “individual bands of the plurality of bands are made of different polymers” as recited in independent claim 35. The Examiner cites Column 13, lines 36-64, of the Alvarado patent which includes a variety of materials for the polymer members, but this is immaterial as to whether individual bands are made of different polymers as claimed. Nothing disclosed in the Alvarado patent even suggests that individual polymer members can be made of different polymers.

Reconsideration of the rejection of independent claim 35 is respectfully requested.

Independent Claim 36: In the final office action mailed April 26, 2005, the Examiner asserted that the Alvarado patent discloses “the band further comprises a first layer (42a is inherently capable of forming a layer that is located circumferentially around the stent 10) and a second layer (42b inherent feature), where they are located circumferentially around the stent.” The Applicant respectfully submits that the Alvarado patent fails to disclose the claim limitation that “the band further comprises a first layer and a second layer, the first layer located circumferentially around the stent, and the second layer attached circumferentially around the first layer” as recited in independent claim 36. The Applicant once again points out that elements 42a and 42b of Figure 3c of the Alvarado patent are flexible regions of the stent 10 and have nothing to do with layers. *See* Column 12, lines 53-54. Should the Examiner maintain the rejection of claim 36, the Applicant respectfully notes that in relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. *See* MPEP 2112, IV. Nothing disclosed in the Alvarado patent even suggests that polymer members can include more than one layer.

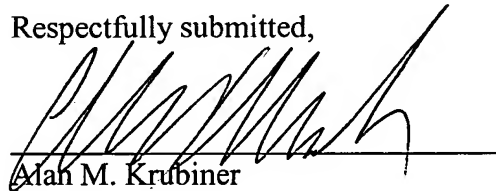
Reconsideration of the rejection of independent claim 35 is respectfully requested.

Expedited Processing  
Application No. 10/056,418  
Amd. Dated: June 17, 2005  
Reply to Final Office Action mailed April 26, 2005

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-5021.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alan M. Krubiner', is written over a horizontal line.

Alan M. Krubiner  
Registration No. 26,289  
Attorney for Applicant

Medtronic Vascular, Inc.  
3576 Unocal Place  
Santa Rosa, CA 95403  
Facsimile No.: (707) 543-5420